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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1935 of 2002

with

SPECIAL CIVIL APPLICATION No 1936 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

and

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

R KUMAR SPUNTEX PVT LTD

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 1935 of 2002

MR AMAR P DAVE for Petitioner No. 1-2

MR DN PATEL for Respondent No. 1

RULE SERVED BY DS for Respondent No. 2-3

2. Special Civil Application No. 1936 of 2002

MR AMAR P DAVE for Petitioner No. 1
MR DN PATEL for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 17/06/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

These petitions challenge the constitutional validity of the provisions of Rule 96ZQ(5)(ii) of the Central Excise Rules, 1944, and also challenge the orders in original passed by respondent No.3 Additional Commissioner of Central Excise, Ahmedabad-1 insofar as respondent No.3 has imposed penalty under the provisions of the aforesaid Rule 96ZQ(5)(ii) of the said Rules.

2. While issuing Rule on 8th February 2002, this Court had directed these petitions to be heard with Special Civil Application No. 164 of 2002 and other cognate matters. In the meanwhile, only the part of the order as to amount of penalty that is levied under Rule 96ZQ(5)(ii) of the Central Excise Rules, 1944, sought to be recovered, was ordered to be stayed.

3. When these petitions have reached final hearing, learned counsel for the parties state that Special Civil Application No. 164 of 2002 and some cognate matters have already been heard and decided by this Court on 7th March 2002. While making the Rule absolute in the said petition/s, this Court directed the Assessing Officer, i.e., the authority who has passed the Order-in-Original to consider the matters insofar as the penalty was concerned in light of the observations made in the said judgment. This Court held, that although the provisions of Clause (ii) of Sub-Rule (5) of Rule 96ZQ of the Central Excise Rules were not required to be declared as ultra vires, the authority was required to be directed to read the Rule in a reasonable manner, that is to say, the penalty stipulated therein is only the maximum amount which could be levied and the assessing authority has the discretion to levy lesser amount depending upon the facts and circumstances of each case. This Court also referred to and followed the decision of the Apex Court in Hindustan Steel Ltd., Vs. The State of Orissa, reported in AIR 1970 S.C. Page 253, that penalty cannot be imposed merely on account of failure to comply with the

procedural provision and this Court referred to the principles laid down by the Apex Court in Paragraph 7 of the said decision.

4. We have heard the learned counsel for the petitioners as well as the learned Senior Standing Counsel for the Central Government. There is no dispute about the fact that the controversy raised in the present petition is covered by the principles laid down in the said judgment dated 7th March 2002 of this Court in Special Civil Application No. 164 of 2002 and other cognate matters.

5. We accordingly allow these petitions and quash and set aside the impugned orders-in-original, dated 25th January 2002 and 29th December 2000 at Annexure "C" to the respective petitions insofar as the orders impose penalty under Rule 96ZQ(5)(ii), and the matters are remanded to the authorities. The remaining portions of the impugned orders are not interfered with, for the simple reason that the petitioners have preferred appeals for challenging the other parts of the orders levying duty and interest. The authorities will be at liberty to pass appropriate orders of penalty in accordance with law in light of the observations made by this Court in the aforesaid judgment dated 7th March 2002 in Special Civil Application No. 164 of 2002 and cognate petitions. It is again clarified that this judgment is only confined to the question of penalty levied upon the petitioners.

6. Rule is made absolute to the aforesaid extent with no order as to costs.

[M.S. Shah, J.]

rmr. [K.A. Puj, J.]